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IN THE

Supreme Court of the United States

October Term, 1979

No. 79-952

EDDIE C. THOMAS,

Petitioner,

vs.

THE REVIEW BOARD OF THE INDIANA EMPLOYMENT SECURITY DIVISION, WILLIAM H. SKINNER, J. FRANK HALEY, and RALPH MILES, as members and constituting the Review Board of the Indiana Employment Security Division,

and

BLAW-KNOX FOUNDRY & MACHINERY, INC.,

Respondents.

On Writ of Certiorari to the Supreme Court of Indiana

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* AND BRIEF OF THE AMERICAN JEWISH CONGRESS, *AMICUS CURIAE*

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MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

The undersigned, as counsel for the American Jewish Congress, respectfully moves this Court for leave to file the accompanying brief *amicus curiae* in support of Petitioner Eddie C. Thomas' claim that the statute herein challenged, as applied to him, violates the First Amendment to the United States Constitution.

Consent to the filing of the attached brief was sought from the parties. Counsel for the Petitioner consented. The Attorney General of Indiana, counsel for the Respondents The Review Board of the Indiana Employment Security Division, and its members, declined to consent.

The interest of the *amicus* is set forth in the attached brief. The *amicus* requests permission to file this brief because it believes that this case presents a serious threat to the principles of religious freedom to which it is firmly committed. The *amicus* believes that its accumulated experience enables it to address the constitutional issues raised on this appeal in the broad context of this country's tradition of religious freedom and that its brief will therefore assist the Court in the disposition of this case.

Respectfully submitted,

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BRIEF OF THE AMERICAN JEWISH CONGRESS, *AMICUS CURIAE*

Interest of the *Amicus*

This brief is submitted on behalf of the American Jewish Congress, a national organization of American Jews, founded by Rabbi Stephen S. Wise, Supreme Court Justice Louis D. Brandeis, Federal Judge Julian Mack and others

to protect the religious, civil, political and economic rights of Jews and to promote the principles of democracy. Our interest in the case before the Court arises from our long-standing commitment to the First Amendment's guarantee of the free exercise of religion and our perception that the decision of the court below is inimical to the cause of religious freedom.

We believe that the decision below is fundamentally at odds with this Court's decision in *Sherbert* v. *Verner,* a case in which we submitted an *amicus curiae* brief. In addition, we believe that the decision of the Supreme Court of Indiana is tainted by its consideration of factors which are dangerously destructive of the basic principles of religious freedom which underlie the First Amendment.

Constitutional Provisions and Statutes Involved

The First Amendment to the United States Constitution provides:

> Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Chapter 15, Section 1 of the Indiana Employment Security Act, Indiana Code Section 22-4-15-1 (Burns 1976 Supp.) provides:

> With respect to benefit periods including extended benefit periods established subsequent to July 6, 1974, and before July 3, 1977, an individual who has vol-

> untarily left his employment without good cause in connection with the work or who was discharged from his employment for just cause shall be ineligible for waiting period or benefit rights for the week in which the disqualifying separation occurred and until he has subsequently earned remuneration in employment equal to or exceeding the weekly benefit amount of his claim in each of ten (10) weeks. . . .

Chapter 32, Section 9 of the Indiana Employment Security Act, Indiana Code Section 22-4-39-9 (Burns 1974) provides:

> Any decision of the liability referee shall be conclusive and binding as to all questions of fact. . . .

Statement of the Case

Petitioner-claimant Eddie C. Thomas, a Jehovah's Witness, was hired to work in respondent-employer Blaw-Knox' roll foundry. After working there almost one year, the roll foundry closed and Blaw-Knox transferred Thomas to a job as chainman hooker on the turret line. On his first day on the new job, Thomas realized that the work he was doing—producing turrets for tanks—was armament-related. After checking the board where job openings were posted, he concluded that "all of Blaw-Knox was armaments." Thomas asked for a lay-off, which was denied, and, on November 6, 1975, having worked as a chainman for less than one month, he quit, stating that continuing to work with armaments would violate his religious principles.

Thomas applied for unemployment compensation benefits under the Indiana Employment Security Act, Indiana

Code Sections 22-4-1-1 *et seq.* (Burns 1974 and 1976 Supp.). At the administrative hearing, Thomas, who was not represented by counsel, testified that contributing to armaments production was at odds with his religious beliefs. He said that upon transfer to the turret line and realization that these turrets were for tanks, he consulted another Blaw-Knox employee, a friend of his who was also a Jehovah's Witness. The friend advised Thomas that he did not view working at Blaw-Knox as "unscriptural." Thomas was unable to "rest with" this view which was based on a less strict interpretation of Jehovah's Witnesses' principles than his own.

When asked at the hearing to explain what kind of work his religious views would permit, Thomas testified that his religious beliefs did not conflict with the work he did at the roll foundry and that his conscience would allow him to engage indirectly in the production of arms, for example, as an employee of a raw material supplier. Thomas was never asked to explain the doctrinal basis for his opposition to participation in arms production or for the line he drew between direct and indirect participation.

The hearing referee found, as fact, that Thomas' religious beliefs specifically preclude him from producing or aiding in the manufacture of items used in the advancement of war. He further found, as fact, that Thomas had quit his job because of these religious convictions. The referee concluded, however, that Thomas had not discharged his statutory duty of establishing that he did not voluntarily leave his employment "without good cause in connection with the work." Indiana Code Section 22-4-15-1. The Review Board

adopted the referee's finding and conclusions, and affirmed the denial of benefits.

The Court of Appeals of Indiana reversed the decision of the Review Board, holding that the disqualification provision of Section 22-4-15-1, as applied to Thomas, impermissibly burdened his First Amendment right to the free exercise of religion. *Thomas* v. *Review Board,* 65 Ind. Dec. 238, 281 N.E.2d 888 (1978).

The Supreme Court of Indiana, by a 3-2 vote, vacated that decision, finding but an indirect infringement, if any, of Thomas' free exercise right. The majority, in so holding, stated that Thomas was not required to violate a central tenet of his religion, that the basis of Thomas' belief was unclear, and that the precise nature of his belief was unarticulated. The court further held that the award of unemployment compensation benefits to one who voluntarily quits work for religious reasons, where such benefits are denied to persons who quit work for personal reasons which are not religious, would violate the Establishment Clause of the First Amendment. *Thomas* v. *Review Board,* —— Ind. ——, 391 N.E.2d 1127 (1979).

This Court granted Thomas' petition for certiorari on February 19, 1980.

POINT I

Disqualification from unemployment benefits of one who, for reasons of religicus conscience, is compelled to resign from his job, unconstitutionally deprives him of his free exercise of religion.

The Indiana statute, construed and applied to require forfeiture of benefits for leaving a job for reasons of religious conscience, impermissibly restricts the religious liberty of those whose consciences compel that act. The Supreme Court of Indiana erred in holding that the disqualifying statute, so construed, is valid because it "imposes only an indirect burden, if any, on claimant's free exercise of his religion." *Thomas* v. *Review Board, supra,* —— Ind. at ——, 391 N.E.2d at 1131. Only in the narrowest and most unrealistic sense can it be said that the State of Indiana is not forcing those in Thomas' position to violate their religious consciences. A worker, with no other source of livelihood, who knows that he will receive no unemployment benefits if he resigns from a job because its changed character offends his religious beliefs, can hardly be said to be exercising full freedom of choice. While the compulsion may be indirect, the infringement of free exercise rights is nonetheless substantial. Since it is justified by no compelling state interest, it violates the First Amendment. *Sherbert* v. *Verner,* 374 U.S. 398 (1963).

In *Sherbert* v. *Verner,* this Court addressed the question whether a Seventh Day Adventist could be denied unemployment benefits after she was discharged by her employer for refusing to work on her Sabbath. She was unable to

obtain other work because her religious scruples dictated that she abstain from work on Saturdays. Unemployment compensation benefits were denied under the South Carolina statute because, through her restriction upon availability for Saturday work, she "failed, without good cause . . . to accept suitable work when offered. . . ."

This Court declared the disqualification statute, as applied to Sherbert, unconstitutional. Distinguishing the child labor and polygamy cases, the Court stated that Sherbert's objection to Saturday work did not involve religious-based conduct of a kind within the reach of state legislation. The Court thus reasoned that, if the state court's decision could withstand constitutional challenge,

> it must be either because her disqualification as a beneficiary represents no infringement by the State of her constitutional rights of free exercise, or because any incidental burden on the free exercise of [her] religion [is] justified by a "compelling state interest in the regulation of a subject within the State's constitutional power to regulate. . . ."

Id. at 403. The Court concluded that the withholding of benefits interfered with free exercise to the same extent as a fine imposed for Saturday worship. It rejected the contention that the filing of fraudulent claims by unscrupulous claimants feigning religious objections to Saturday work might dilute the unemployment compensation fund and burden the scheduling by employers of necessary Saturday work, holding that it would be incumbent on the State to demonstrate that no alternative form of regulation would combat such abuses without infringing First Amendment rights.

We submit that this case is controlled by *Sherbert* v. *Verner*. As in *Sherbert,*

> not only is it apparent that appellant's declared ineligibility for benefits derives solely from the practice of her religion, but the pressure upon her to forego that practice is unmistakable.

Since the Board has conceded that no compelling state interest exists to justify that burden, *Thomas* v. *Review Board, supra,* 65 Ind. Dec. at ——, 381 N.E.2d at 895, the decision cannot stand.*

It is true that Thomas was denied unemployment benefits under the disqualifying provision dealing with those who voluntarily quit work without good cause while Sherbert's disqualification arose under an availability for work provision. The distinction is, however, of no constitutional moment. Sherbert was fired by her employer for refusal to work on her Sabbath. If, instead, she had quit when her employer changed her work week from five days to six, and had been denied benefits under South Carolina's voluntary-quit disqualification, the reasoning of the *Sherbert* decision would have compelled the same result as the result reached under the actual facts. Similarly, had Thomas been fired from his job at Blaw-Knox for refusal to work on the turret line, and thereafter refused available work in an armaments factory, and had he been denied benefits for that reason, he would be in precisely the same position as Sherbert. Application of the constitutional principle

* The court below stated that the disqualification provision is designed to minimize unemployment by "encouraging" workers to remain at their jobs. The state however has no legitimate interest, let alone a compelling one, in encouraging persons with religious objections to certain work to put aside those objections in order to continue that employment.

cannot turn on a distinction which, in practical terms, is meaningless.

Indeed, Thomas was in essence involuntarily laid off from his job at Blaw-Knox' roll foundry, a job to which he held no religious objection. He was then involuntarily transferred to a position on the tank turret line which he did find morally offensive.* While he initially accepted the transfer, not realizing what it entailed, and held the job for a short period while struggling to determine whether the work could be reconciled with his religious objections to participation in the production of arms, he ultimately determined that it could not. Having made that decision, he refused to do work in conflict with his religious convictions. Thus, the situation is not significantly different from what it would have been if Thomas had first been laid off from his old job and then been called back for the job in the tank turret line and had refused it. A refusal to accept employment under conditions at odds with religious beliefs was precisely what this Court held protected under the Free Exercise Clause in *Sherbert*. *See Lincoln* v. *True,* 408 F. Supp. 22 (W.D. Ky. 1975); *Hildebrand* v. *Appeals Board,* 19 Cal. 3d 765, 140 Cal. Rptr. 151, 566 P.2d 1297 (1977) (Mosk, J., dissenting), *cert. denied,* 434 U.S. 1068 (1978).

The unemployment compensation boards and the courts of several states have had no difficulty administering unemployment compensation schemes so as not to burden Free Exercise rights of the kind asserted by Thomas. Thus, in fact situations virtually identical to the one presented here,

* This is thus not a case where an employee accepts employment knowing that it is at variance with his religious beliefs.

statutory disqualification provisions have been ruled inapplicable. *See* App. Bd. Dec. 24,048-52 Unempl. Ins. Rep. (N.Y.) (CCH) ¶1965.12 (since religious objection to working on military implements of destruction because of religious beliefs, acceptance of such work being an offense to claimant's religious and moral conscience, is not a proper basis for disqualification for voluntarily leaving employment without good cause when claimant was transferred to such work from work that was not objectionable to him); Comm. Dec. No. 422-A-51 (Conn. Labor Bull., Nov. 1951) 3 Unempl. Ins. Rep. (CCH) (Conn.) ¶1975.12 (when claimant became aware of the fact that the assembly work he was assigned to do was ultimately destined to be used for military purposes, he quit his job on the grounds that his religion forbade him doing any work that would contribute to the injury or destruction of human beings. "Due to the exigencies of our times, the job on which the claimant worked was changed from a civilian one to one which produced goods for military purposes. From the moment that happened, the work that the claimant was doing became offensive to his religious convictions,—to which he was entitled to hold under the Constitution. From that moment, his work became unsuitable as no person is compelled, as a condition of collecting unemployment benefits, to conduct himself contrary to his religious beliefs or convictions.").*

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* See also *Brewster* v. *Board of Review,* 8 Unempl. Ins. Rep. (CCH) (Ohio) ¶1965.13 (Ohio Ct. of Com. Pleas, Ashland Cty. 1963) (claimant had right to refuse job as waitress where she would have to serve alcoholic beverages, due to the degree of risk to her moral belief and religious principles); App. Trib. Dec. No. AT-4572-57 (10/29/59), 8 Unempl. Ins. Rep. (CCH) (N.D.) ¶1975.13 (claimant employed by a secret order whose tenets are unacceptable to her and who quits rather than becoming a member of the order had good cause); *Syrek* v. *California Unemployment Insurance Appeals*

(footnote continued on next page)

While these results may be explained in part by differences in the language of the respective state disqualification statutes, they are also consistent with the First Amendment of the Constitution. The decision of the Supreme Court of Indiana is not.

To describe Thomas' resignation as a "voluntary quit" is to ignore the difference between a choice compelled by religious conscience after a unilateral transfer which changes the nature of the job and a choice, for example, motivated by emotional difficulties. *See Geckler* v. *Review Board,* 244 Ind. 473, 193 N.E.2d 357 (1963). To hold that such a resignation is without "good cause" is to exhibit not neutrality, but hostility, to religion. To call religious conviction mere "personal reasons" in the same category as child care and transportation problems, *see Gray* v. *Dobbs House, Inc.,* —— Ind. App. ——, 357 N.E.2d 900 (2d Dist. 1976), is to ignore the fact that the Free Exercise Clause of the First Amendment places religious beliefs and practices in a special and protected class. In short, to deny Eddie C. Thomas unemployment compensation benefits violates both the letter and the spirit of *Sherbert* v. *Verner.*

Board, 7 Cal. Rptr. 97, 54 Cal. 2d 519, 354 P.2d 625 (1960) (conscientious objector's refusal to accept employment because loyalty oath required held with good cause); Bd. of Rev. Dec. No. 44-BR-60 (9/1 UCIS Ben. Ser., 10220-Tenn. R) 10 Unempl. Ins. Rep. (CCH) (Tenn.) ¶1975.131 (mill worker who refused to join union because it conflicted with her religious belief, and who quit when informed by the employer that her job would be discontinued unless she became a member, held to have left voluntarily with good cause, inasmuch as the Tennessee Constitution provides that no human authority may control or interfere with the rights of conscience).

POINT II

The Supreme Court of Indiana misunderstood its role and committed constitutional error by questioning Thomas' underlying religious beliefs.

The decision of the Supreme Court of Indiana that the disqualifying statute, as applied to Thomas, worked no infringement of his Free Exercise rights was based at least in part on that court's subjective evaluation of Thomas' religious beliefs and practices. The Review Board found, as fact, that Thomas' objection to armaments work was religious and his reason for quitting the same.* Nevertheless, the Supreme Court of Indiana quoted extensively from Thomas' testimony, given when he was unrepresented by counsel, and relied on Thomas' own words to distinguish his position from Adell Sherbert's:

> Here, although [Thomas'] reasons for quitting work are described as religious, it is unclear what his belief was, and what the religious basis of his belief was. Thomas is not required by statute to violate a cardinal tenet of his religion. Our review of the record here reveals that the basis of claimant's belief is unclear. The precise belief is not articulated.

In addition, the Supreme Court of Indiana, as well as the hearing officer and the Review Board, appeared to be influenced by the fact that Thomas' friend, also a Jehovah's Witness, found nothing unscriptural about working at Blaw-Knox. See *Thomas* v. *Review Board, supra,* —— Ind. at - —, 391 N.E.2d at 1128.

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* Under Indiana's Unemployment Security Act, Section 22-4-32-9 (Burns 1974), those factual findings are conclusive and binding.

The Supreme Court of Indiana's consideration of these factors was wholly improper. The Free Exercise Clause protects more than "cardinal tenets" of a religion. Its guarantees do not extend only to religious beliefs which are shared by all members of a sect. Its protections do not depend upon the degree of articulateness with which a claimant expresses his religious views. And the applicability of the Free Exercise Clause surely does not depend on whether a court or other state agency finds the religious belief in question comprehensible or clear.

The Indiana court's limitation of Free Exercise protection to those religious practices which are compelled by a religion's "cardinal tenets" finds no support in the First Amendment or in the decisions of this Court construing it. First, the court's view that refusal to do armaments-related work does not derive from a central tenet of the Jehovah's Witnesses is almost inexplicable. The opposition of Jehovah's Witnesses to military service and to related work is well known to this Court. *See, e.g., Sicurella* v. *United States,* 348 U.S. 385 (1955); *Gibson* v. *United States,* 329 U.S. 338 (1946); *Estep* v. *United States,* 327 U.S. 114 (1946).

Moreover, while this Court has sometimes used the words "fundamental" or "basic" in describing the tenets it was protecting against governmental encroachment, *see, e.g., Wisconsin* v. *Yoder,* 406 U.S. 205 (1972), *Sherbert* v. *Verner, supra,* 374 U.S. at 399 n.1, its use of those terms cannot be read as a limitation on the kinds of religious practices protected by the Free Exercise Clause. The decisions make it clear that, once it is established that a governmental regulation significantly interferes with religious-

based conduct, the test for its validity is whether or not it poses a substantial threat to public safety, peace or order. We know of no decision that suggests that the relevant test is the centrality of the religious belief. That is not surprising. Judicial determinations as to whether a particular religious practice is based on a "fundamental tenet" or on a less-than-fundamental tenet necessarily would involve the court in just the type of inquiry which the First Amendment prohibits.

The court below was in error not only in imposing this "cardinal tenets" limitation but also in giving weight to the fact that one of Thomas' co-religionists did not find working at Blaw-Knox at odds with his religious beliefs. Consideration of this factor in effect limits Free Exercise rights to practices which derive from the tenets of established religious sects. This is not the law. An individual's sincere religious belief, even if not shared by all members of a sect, is still within the protection of the First Amendment. *Lewis* v. *Califano,* No. 79-1739, slip op. at 17 (3d Cir. Feb. 21, 1980).

The First Amendment was designed in large measure to protect freedom of conscience. To fulfill this goal, the Amendment must be read to protect the conscience of each individual. See Merel, *"The Protection of Individual Choice: A Consistent Understanding of Religion Under the First Amendment,"* 45 *Chi. L. Rev.* 805 (1978). In *Davis* v. *Beason,* 133 U.S. 333, 342 (1890), this Court defined religion and spoke of the Amendment's concern for individuals:

> The term "religion" has reference to one's view of his relations to his Creator, and to the obligations they

> impose of reverence for his being and character, and of obedience to his will. It is often confounded with the *cultus* or form of worship of a particular sect, but is distinguishable from the latter. The first amendment to the Constitution, in declaring that Congress shall make no law respecting the establishment of religion, or forbidding the free exercise thereof, was intended to allow every one under the jurisdiction of the United States to entertain such notions respecting his relations to his Maker and the duties they impose as may be approved by his judgment and conscience, and to exhibit his sentiments in such form of worship as he may think proper. . . .

In his concurring opinion in *School District of Abington Twp.* v. *Schempp,* 374 U.S. 203, 231 (1963), Justice Brennan said:

> The constitutional mandate expresses a deliberate and considered judgment that such matters are to be left to the conscience of the citizen, and declares as a basic postulate of the relation between the citizen and his government that "the rights of conscience are, in their nature, of peculiar delicacy, and will little bear the gentlest touch of governmental hand. . . ."

As Judge Weinstein wrote in *Stevens* v. *Berger,* 428 F. Supp. 896, 900 (E.D.N.Y. 1977):

> So far as our law is concerned, one person's religious beliefs held for one day are presumptively entitled to the same protection as the beliefs of millions which have been shared for thousands of years.

Finally, the Indiana court's reliance on Thomas' lack of clarity in expressing his religious views and its inability to comprehend the doctrinal underpinnings of Thomas' refusal to do armaments-related work also taint that court's

holding. Consideration of those factors is in clear conflict with the commands and purposes of the Free Exercise Clause.

Not every belief is a religious belief entitled to the protection of the First Amendment. Nor is every practice which is claimed to be religious entitled to protection from governmental regulation by reason of the Free Exercise Clause. However, in determining what practices are "religious" and thus, presumptively, within the clause's scope, the sole valid considerations are whether the practice derives from a belief which is religious in nature and sincerely held. *See Wisconsin* v. *Yoder, supra, United States* v. *Seeger,* 380 U.S. 163 (1965). As this Court stated in *United States* v. *Seeger, supra* at 184, in construing the statutory exemption of conscientious objectors from combatant training and services:

> *it must be remembered that in resolving these exemption problems one deals with the beliefs of different individuals who will articulate them in a multitude of ways.* In such an intensely personal area, of course, the claim of the registrant that his belief is an essential part of a religious faith must be given great weight. . . . The validity of what he believes cannot be questioned. Some theologians, and indeed some examiners, might be tempted to question the existence of the registrant's "Supreme Being" or the truth of his concepts. But these are inquiries foreclosed to Government. As Mr. Justice Douglas stated in *United States* v. *Ballard,* 322 U.S. 78, 86 (1944): "Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. *Religious experiences which are as real as life to some may be incomprehensible to others.*" (emphasis added).

Religious beliefs are not required to be consistent, logical, acceptable, or comprehensible to others. A religious belief which appears to every other member of the human race preposterous still merits the protections of the First Amendment. See *In re Jenison,* 265 Minn. 96, 120 N.W.2d 515, *vacated and remanded in light of Sherbert* v. *Verner,* 375 U.S. 14, *on remand,* 267 Minn. 136, 125 N.W.2d 588 (1963) (objection to jury service based on Biblical injunction "Judge not lest ye be judged"); *Stevens* v. *Berger,* 428 F.Supp. 896 (E.D.N.Y. 1977) (religious objection to use of social security number); *Teterud* v. *Burns,* 522 F.2d 357 (8th Cir. 1975) (wearing of long braided hair by Indian).

> We can have intellectual individualism and the rich cultural diversities that we owe to exceptional minds only at the price of occasional eccentricity and abnormal attitudes. When they are so harmless to others or to the State as those we deal with here, the price is not too great. But freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order.
>
> If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion. . . .

West Virginia State Board of Education v. *Barnette,* 319 U.S. 624, 641-42 (1943).

The Indiana court, in questioning Thomas' underlying religious beliefs, overstepped constitutional bounds. Its decision, tainted by the consideration of irrelevant and impermissible factors, cannot stand.

POINT III

Extension of unemployment benefits to one who, for reasons of religion, is compelled to resign from his job would not violate the Establishment Clause of the First Amendment.

The Supreme Court of Indiana, citing only *Gillette* v. *United States,* 401 U.S. 437 (1971), and without analysis, stated:

> To hold that an employee who voluntarily quits work for personal reasons and personal beliefs which can somehow be described as religious beliefs, must be allowed benefits while other employees who voluntarily quit work for valid personal reasons or beliefs which are not "religious" are denied benefits, would violate the Establishment Clause of the First Amendment.

—— Ind. at ——, 391 N.E.2d at 1134.

This ruling is flatly inconsistent with the ruling in *Sherbert* v. *Verner* that an award of unemployment compensation benefits to Sabbatarians, even where those benefits are denied to others who for personal non-religious reasons cannot work on Saturdays, "plainly" does not foster the establishment of the Seventh Day Adventist religion. *Sherbert* v. *Verner, supra,* 374 U.S. at 409. If it were otherwise, every religious accommodation made to serve the ends of the Free Exercise Clause would run afoul of the Establishment proscription, a proposition which this Court has repeatedly rejected. In *Walz* v. *Tax Commission of the City of New York,* 397 U.S. 664, 668-69 (1970), this Court, reject-

ing a claim that a grant of tax exemption for places of worship violated the Establishment Clause, stated:

> The Court has struggled to find a neutral course between the two Religion Clauses, both of which are cast in absolute terms, and either of which, if expanded to a logical extreme, would tend to clash with the other. . . .
>
> The course of constitutional neutrality in this area cannot be an absolutely straight line; rigidity could well defeat the basic purpose of these provisions, which is to insure that no religion be sponsored or favored, none commanded, and none inhibited. The general principle deducible from the First Amendment and all that has been said by the Court is this: that we will not tolerate either governmentally established religion or governmental interference with religion. Short of those expressly proscribed governmental acts there is room for play in the joints productive of a benevolent neutrality which will permit religious exercise to exist without sponsorship and without interference.

Gillette v. *United States,* relied upon by the Indiana court, in no way supports its holding. This Court there held that the federal law exempting from service in the armed forces those who are "conscientiously opposed to participation in war of any form" did not violate the Establishment Clause insofar as persons with religious objections to particular wars were excluded from this exemption. While this Court did state that "as a general matter" the Establishment Clause prohibits government "from abandoning secular purposes in order to put an imprimatur on one religion or on religion as such or to favor the adherents of any sect or religious organization," it also

cautioned that the metaphor of a wall between Church and State should not be taken so literally as to bar governmental action that protects the exercise of religious freedom. The Court stated:

> it is hardly impermissible for Congress to attempt to accommodate free exercise values, in line with "our happy tradition" of "avoiding unnecessary clashes with the dictates of conscience." *United States* v. *Macintosh,* [283 U.S. 605, 634] (Hughes, C.J., dissenting). See *Abington School District* v. *Schempp,* 374 U.S., at 294-299 . . . (Brennan, J., concurring); *id.* at 306 . . . (Goldberg, J., concurring); *id.* at 309 . . . (Stewart, J., dissenting). See also *Welsh* v. *United States,* 398 U.S., at 370-373 . . . (White, J., dissenting). "Neutrality" in matters of religion is not inconsistent with "benevolence" by way of exemptions from onerous duties, *Walz* v. *Tax Commission,* 397 U.S., at 669 . . .

401 U.S. at 453-54.

The government may, and in certain cases must, give special protection to religious beliefs. *See, e.g., Sherbert* v. *Verner, supra; Wisconsin* v. *Yoder, supra; In re Jenison, supra; Arlan's Department Store, Inc.* v. *Kentucky,* 371 U.S. 218 (1962) (rejecting establishment challenge to statutory exemption from Sunday closing laws for Sabbath observers); *Braunfeld* v. *Brown,* 366 U.S. 559 (1961) (statutory exception for Sabbath observers from compulsory Sunday closing laws "may well be the wisest solution to the problem"); *Arver* v. *United States,* 245 U.S. 366, 389-90 (1918) (religious exemption from combat service); *United States* v. *Seeger, supra* (same).

Traditional "establishment" analysis leads to the same conclusion. Governmental action which is claimed to violate the Establishment proscription must be measured against the three-part test set forth in *Meek* v. *Pittenger*, 421 U.S. 349, 358 (1975), and numerous other cases. The statute must have a secular legislative purpose; it must have a primary effect that neither advances nor inhibits religion; and it must not lead to excessive governmental entanglement with religion.

If Indiana's unemployment compensation scheme were administered to make persons such as Thomas who have left work because of religious convictions eligible for benefits, it would survive scrutiny under each part of this test. The statute, so construed, would serve the valid legislative purpose of ensuring financial support to those without jobs while avoiding the clearly impermissible legislative purpose of encouraging workers to put aside religious convictions which make it impossible for them to perform certain tasks. In no real sense can that construction have a primary effect of advancing the religion of Jehovah's Witnesses. Unemployment benefits are a limited and temporary welfare entitlement of persons who have been employed and who are without employment but looking for and willing to accept jobs. Given the limited nature of the benefits, it cannot seriously be claimed that the statute so construed encourages membership in "favored" religious organizations. Like the conscientious objector to military service, one with religious objections to participation in armaments production is confronted with a "painful dilemma" which "arises precisely because he feels himself bound in conscience not to compromise his beliefs or affiliations." *Gillette* v. *United States, supra,*

401 U.S. at 454. Finally, to extend unemployment benefits to one in Thomas' position does not result in excessive governmental entaglement with religion. Whenever a governmental body is required to pass on a religion-based claim, some entanglement with religion results. The Constitution, however, proscribes only excessive entanglement. The entanglement which would arise here, that incident to adjudicating the sincerity and religious nature of the claimant's beliefs, has been deemed not excessive in numerous contexts. In short,

> Nothing in the Constitution compels the organs of government to be blind to what everyone else perceives—that religious differences among Americans have important and pervasive implications for our society. Likewise nothing in the Establishment Clause forbids the application of legislation having purely secular ends in such a way as to alleviate burdens upon the free exercise of an individual's religious belief.

School District of Abington Twp. v. *Schempp, supra,* 374 U.S. at 295 (Brennan, J., concurring).

Conclusion

It is respectfully submitted that, for the reasons stated above, this Court should reverse the ruling of the court below.

Respectfully submitted,

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